IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

OP.No. 20545 of 1998(U)

PETITIONERS:
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1. A.D. JAYALAKSHMY, W/O. LATE K.P. KALAPPAN, AGED 45 YEARS, SATHYYA NIVAS, DOWN BAZAR, MANANTHAVADY, WAYANAD DIST.

2. K. RAVEENDRAN, SON OF LATE K.P. KALAPPAN, SATHAYA NIVAS, DOWN BAZAR, MANATHAVADY, WAYANAD DIST.

3. SATHAYABHAMA, D/O. LATE K.P. KALAPPAN, DO.DO.

BY ADV. SRI.ABRAHAM MATHEW

RESPONDENTS:
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1. AGRICULTURAL INCOME TAX AND SALES TAX OFFICER, MANANTHAVADY.

2. THE ADDL. APPELLATE ASSISTASNT COMMISSIONER, AIT & ST, KOZHIKODE.

3. THE AGRICULTURAL INCOME TAX APPELLATE TRIBUNAL, KOZHIKODE.

4. THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, OFFICE OF THE DEPUTY COMMISSIONER, KALPETTA, WAYANAD DIST.

5. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT (TAXES), THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19.11.2007,M ALONG WITH OP NO. 22146 OF 1998, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 36204 OF 1998 IN OP 20545 OF 1998

DISMISSED

19.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF THE COMMON ORDER PASSED BY THE 3RD RESPONDENT IN AIT APPEAL NO. 124/85 AND 295/86 DATED 1.8.88

EXT.P2 TRUE COPY OF THE JUDGMENT OF THIS COURT IN OP 7465 OF 1991 DATED 2.8.94

EXT.P3 TRUE COPY OF THE ORDER OF ASSESSMENT PASSED BY THE ADDL. AGRL. INCOME TAX OFFICER I, MANANTHAVADY AS NO. K 188/85-86 DATED 3.1.91

EXT.P4 TRUE COPY OF THE ORDER OF ASSESSMENT PASSED BY THE ADDL. AGRL. INCOME TAX OFFICER I, MANATHAVADY AS K. 188/86-87 DATED 3.1.91

EXT.P5 TRUE COPY OF THE APPELLATE ORDER AND GROUNDS OF; DECISION PASSED IN APPEAL NOS. 231, 232 AND 233 OF 1991 DATED NIL.

EXT.P6 TRUE COPY OF THE JUDGMENT OF THIS COURT IN OP 17564 OF 1994 DATED 30.1.95

EXT.P7 TRUE COPY OF THE ORDER OF ASSESSMENT PASSED BY THE FIRST RESPONDENT FOR THE ASSESSMENT YEARS 1985-86 TO 1987-88 DATED NIL.

EXT.P8 TRUE COPY OF THE APPELLATE ORDER AND GROUNDS OF DECISION STA NO. 203 AND 204/95 PASSED BY THE 2ND RESPONDENT FOR THE ASSESSMENT YEARS 1985-86 AND 1986-87 DATED 9.1.96

EXT.9 TRUE COPY OF THE PRE ASSESSMENT NOTICE NO. 34320213/85-86 AND 1986-87 ISSUED BY THE FIRST RESPONDENT DATED 19.8.98

EXT.P10 TRUE COPY OF THE REPLY FILED BY THE PETITIONERS BEFORE THE FIRST RESPONDENT DATED 25.8.98

EXT.P11 TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE FIRST RESPONDENT FOR THE ASSESSMENT YEARS 1985-86 AND 1986-87 DATED 29.8.1998

EXT.P12 TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE FIRST RESPONDENT IN RESPECT OF THE ASSESSMENT YEAR 1`985-86 DATED 15.9.98

EXT.P13 TRUE COPY OF THE DEMAND NSOTICE ISSUED BY THE FIRST RESPONDENT IN RESPECT OF THE ASSESSMENT YEAR 1986-87 DATED 15.9.98

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NOS. 20545 & 22146 OF 1998

Dated this the 19th day of November, 2007

JUDGMENT

These two O.Ps. are filed by the same assessee, challenging the AIT assessment in one O.P. and challenging the notice against assessment in the other. Government Pleader pointed out that assessing officer has only followed the Full Bench decision of this Court in INDIRA DEVI V. DY. COMMISSIONER OF AGRL. INCOME TAX AND SALES, (1998) 1 K.L.T. 634 (FB) with regard to status claimed by the petitioner. However, counsel for the petitioner submitted that even though Full Bench decision is applied, clubbing of wife's income under Section 9(2) is not tenable. I do not think the challenge against assessment should be entertained in the Writ Petition. If the assessment is not in accordance with decision of the Full Bench or if any other issue is to be contested against assessment, it is for the petitioner to file statutory appeal. So far as notice is concerned, it is for the petitioner to file objections against notice. O.Ps. are accordingly closed granting one month's time from today to the petitioner to file

statutory appeal against assessment and to file objections against notice. If appeal against assessment and objections against notice are filed within one month along with a copy of this judgment, the concerned authority will ignore the limitation and proceed to decide the same on merits.

Issue photocopy tomorrow itself.

(C.N. RAMACHANDRAN NAIR)
Judge